Cause No. 86-28018

JAMES W. OGLE, ET UX	§	IN THE DISTRICT COURT OF
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
KEENE CORPORATION	§	127TH JUDICIAL DISTRICT

ORDER OF CONTEMPT

On March 6, 1992, came on to be heard the motion to accept the verdict in the above styled and numbered cause. And the Court finding that the Defendant THE KEENE CORPORATION did cause to appear in *The Houston Chronicle* an advertisement concerning the merits of this cause on the third day of jury deliberations in this cause, that such conduct is an attempted communication in violation of the rules prohibiting parties, their attorneys and others interested in the merits of a case from communicating with the jurors prior to the jurors being excused from the case, that such Defendant represented to the Court that it would produce the documents to demonstrate that the appearance of the advertisement was a "mere coincidence" on or before the 20th of April, 1992, that the order reflecting such representation was set aside when such offer was withdrawn by the filings in the Court of Appeals for the 14th Supreme Judicial District on or about April 16, 1992, and that the case must proceed to judgment, it is therefore

ORDERED, ADJUDGED and DECREED that the verdict be accepted and judgment rendered on the verdict filed. It is further

ORDERED, ADJUDGED and DECREED by the Court that THE KEENE CORPORATION is in contempt of this court for communication attempted with the jurors during their deliberations on the verdict in the above styled and numbered cause by placing or causing to be placed in *The Houston Chronicle* the attached exhibit on March 5, 1992.

Hearing on the sentencing for such conduct is set for June 11, 1992, at 9:00 a.m.

Signed this the 1st day of June, 1992.

by /s/JUDGE S. WOOD
JUDGE PRESIDING

You guys are now the only educated lawyers in town as to what you better be doing.

MR. ISGUR: We're suppose to wait here while your thinking about it right now?

THE COURT: I'm going to think about it.

(Recess was taken)

THE COURT: I don't know when we started this hearing if we put on the record who all was here. The respondent are here this morning. Do you wish to put anything on the record who was here or anything.

MR. ISGUR: I believe we did.

THE COURT: I asked for announcements, but I guess you made it.

MR. ISGUR: I think this so, but I'm Marvin Isgur, I-s-g-u-r, on behalf of Keene Corporation, along with Thomas Kirkendall, K-i-r-k-e-n-d-a-l-l.

THE COURT: And then some other officials and people with you here today?

MR. ISGUR: That is correct, but I don't believe they are making an appearance in the contempt matter.

THE COURT: Okay. And the plaintiffs were here, Mr. Williams was here. I don't think we ever heard that the trial counsel in the case were here. Mr. Kerkher is here and Mr.--

MR. EBLE: Eble.

THE COURT: Correct, and I apologize for stumbling over that.

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OFFICIAL COURT REPORTER

MR. WILLIAMS: He even brought the little Eble, Mathew Eble.

THE COURT: I thought maybe the visitor was from South Carolina. Looks like he is. I didn't know that I had given anybody even an opportunity to go on the record.

This is where I see where we are. What is it name of the motion you filed this morning?

MR. KIRKENDALL: I believe it's a motion to postpone, your Honor.

THE COURT: Motion to postpone is denied. And I do find that the sentencing--and I'll tell you. I looked at, you know, what do you do when it's a corporation? And I determined that--that I would just have a fine, and I believe that's still where I am, and it's $500 per case. Pulling the original contempt orders when they left my hands they had an exhibit attached. There are lots of staple holes in and the exhibits are no longer attached, so I'll gladly add the contempt order back, and I'll add the exhibit back to the contempt order, which was the ad, and I will redo that, and I will prepare--I tried. The typewriter went kaput. Until Scotty figures out how to fix it, I can't even type anything.

I will prepare an order contempt and sentencing. I will attach the original orld of contempt to my sentencing order. And I will incorporate that I set the fine at $500.

I will tell you, if--there is a show cause hearing I could set, I've never really wanted to set that hearing. I didn't want to expand it beyond this, but if everybody thinks it needs to, and where you go, I believe where it goes is that whoever is the individual responsible is the person that it's there for the sanctions, that it's appropriate.

But I believe at this point that the law is and certainly the law that I think is applicable to contempt at standpoint is a fine of--a maximum fine of $500. I'm not going to say $500 per juror. I'm

not going to say $500 for every newspaper that was delivered to the courthouse. I mean I'm not going--It's $500 a case, and that's it. And I believe that is the sanctions under this Court's hearing as it was constituted on March the 6th what I was considering and in the Court signing the order on June the 1st finding the contempt and sentencing today. And the order will be entered.

If there were allowed to this Court a more sizable fine that is more commensurate with the harm and the injury done, I would have assessed it. I have assessed the maximum fine as I understand is appropriate under the laws of Texas for the contempt--criminal contempt that occurred in the jury deliberation process in this case. That to me is absolutely abhorrent of a free society trying to have the kind of jury trial that we had that a free from secret evidence, because as I made it very clear on that day, and let me make it very clear today, I see this as an absolute attack on the integrity of trial by jury and trial as we know them in this nation. I take it most seriously.

That's where I am. You are where you are

(End of Excerpt.)

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